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Responsibility of States for internationally wrongful acts

Letter dated 18 July 2011 from the Permanent Representative of Germany to the United Nations addressed to the Secretary-General

Allow me to transmit herewith the conclusions of the Chair of the International Conference on Arctic Science, International Law and Climate Protection (see annex). The Conference was held in Berlin on 17 and 18 March 2011, and was organized by the Foreign Ministries of the Federal Republic of Germany and Finland. A number of prestigious academic institutions from Finland, Germany, the Russian Federation and the United States of America supported the Conference.

Since, in the view of my Government, the dramatic changes in the Arctic matter globally, concerted monitoring and research is pivotal to understanding and hopefully mitigating the effects of climate change.

I therefore would be grateful if you could circulate the present letter and its annex as a document of the General Assembly, under agenda item 75.

(*Signed*) Peter **Wittig**
Ambassador
Permanent Representative of Germany
to the United Nations

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Annex to the letter dated 18 July 2011 from the Permanent Representative of Germany to the United Nations addressed to the Secretary-General

Conclusions of the Chair of the International Conference on Arctic Science, International Law and Climate Protection: Legal Aspects of Marine Science in the Arctic Ocean*

Berlin, 17 and 18 March 2011

1. The Arctic is of pivotal importance for the world's climate. The effects of climate change can be seen globally and in the Arctic itself. There are fundamental changes in the Arctic ice level with regard to quality, extent and thickness due to global warming and other environmental developments. These include carbon pollution and ocean acidification. The causes of climate change do not originate in the Arctic but mainly from outside the Arctic area and, accordingly, non-Arctic actors are major targets affected by climate change. However, this may change if and when economic activities in the Arctic increase.

2. The freedom of marine scientific research as enshrined in the international law of the sea is a core requirement. The United Nations Convention on the Law of the Sea provides the basic legal regime for marine scientific research in the Arctic Ocean and the legal balance between national interests and common interests in this regard. International scientific cooperation could be considered a common Arctic issue.

3. Balancing the interests of Arctic coastal States and the international community needs to take place within the framework of the Convention. Discussions about a special regime for scientific cooperation in the Arctic have not yet led to conclusive results. At the same time, the regime of the Convention may be open to further development in the future.

4. International cooperation is vital for Arctic governance. Exchange of data would amplify the beneficial aspects of marine scientific research in the Arctic.

5. The exploitation of the newly accessible Arctic must be conducted in a sustainable way. Economic prospects must be balanced against environmental needs.

6. Large areas of the Arctic Ocean will continue to be areas of high seas, where freedom of marine scientific research applies.

7. All relevant actors proceed on the basis of the international law of the sea, in particular the Convention. The international rules are supplemented by various domestic laws and regulations. Domestic procedures should be simplified and best practices identified in order to support marine scientific research. Harmonization of existing permission procedures would be welcome. In particular, one-stop procedures would be helpful.

* The Conference was organized by the German Federal Foreign Office in cooperation with the Ministry of Foreign Affairs of Finland. Support was provided by the Alfred Wegener Institute for Polar and Marine Research, Bremerhaven, Germany; the Arctic and Antarctic Research Institute, St. Petersburg, Russian Federation; the Arctic Centre, University of Lapland, Rovaniemi, Finland; the International Arctic Research Centre, Fairbanks, Alaska, United States; and the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany.

8. It is recommended that guidelines be developed to help coastal States apply the rules of the Convention more homogeneously. Such guidelines should privilege marine scientific research undertaken in cooperation, including cooperation without discrimination between scientists from coastal States and States not bordering the Arctic, and marine scientific research enhancing knowledge about environmental matters. In this respect, one could borrow from the provisions of and practice under the Antarctic Treaty.

9. Research undertaken in the Arctic needs to take into account the legitimate interests of a multitude of stakeholders: indigenous peoples, States, international organizations, researchers and economic actors alike.

10. Climate change affects the foundations of entire indigenous cultural systems. The international community should, therefore, improve cooperation with indigenous peoples in order to reflect more fully their unique attachment to the Arctic.

11. The pertinent provisions of the Convention concerning marine scientific research, in particular article 246, grant coastal States considerable leeway to interpret and establish whether a research project is resource-oriented or not. Apart from that different legal regimes apply to research on the continental shelf and the high seas above it. Formally, the scientific research regime for the outer continental shelf differs from that for the continental shelf.

12. The Convention uses scientific terms in a legal context. The legal usage of those terms may differ from accepted scientific terminology. "Nature does not accept legal boundaries and distinctions." This highlights the need for interdisciplinary cooperation between natural scientists and lawyers in forums such as the Berlin Arctic conferences.

13. International scientific cooperation in the Arctic Ocean is a reality. Cooperation also extends to the context of claims of extended continental shelves. This cooperation benefits the sharing of logistics and resources. Joint evaluation of data helps all actors to understand the Arctic Ocean better.

14. The freedom of marine scientific research should be upheld and maintained. There are different views as to the concrete extent of the application of the principle of the common heritage of mankind. Common interests are an evolving body of international law. International scientific cooperation could be considered a common Arctic issue.

15. There is a need to address the interaction between the Convention and other international agreements. Further research and discussion is required to understand the legal interrelationship between different regimes.

16. A degree of uncertainty will remain about the exact extent of continental shelves beyond 200 nautical miles, as the Commission on the Limits of the Continental Shelf will still need considerable time to complete its work. Different views exist about the exercise of coastal State jurisdiction prior to recommendations on the outer limits of the continental shelf by the Commission. However, this question should not burden future marine scientific research.

17. In the "area", the International Seabed Authority is a vehicle for the dissemination of results of marine scientific research. The Authority is a forum for

exchange of scientific results and thus demonstrates the general thrust of the Convention towards international cooperation.

18. There is an ongoing discussion about the feasibility of complementing the binding universally agreed rules of the Convention with non-binding precepts. A combination of both would be beneficial for coastal States as well as scientists.

19. Difficulties in application processes for research in the Arctic hinder the development of research-related technology. The industry is cooperating with indigenous peoples, taking into account their unique position in the Arctic.

20. Understanding the Arctic climate system requires fully integrated atmospheric and solar radiation, sea ice and ocean science, including observations and modelling activities.

21. The fundamental issue for the improvement of conditions for marine scientific research is access. Access depends upon mutual trust. The Arctic Ocean should remain an area of excellent international scientific collaboration and cooperation.